

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

AUG 21 2000

Leighton G. M. Wong
Acting Head, Environmental Engineering Dept.
Dept. of the Navy, Pacific Division
Naval Facilities Engineering Command
258 Makalapa Dr., Ste. 100
Pearl Harbor, HI 96860-3134

Dear Mr. Wong:

This in response to your letter of July 11, 2000, in which you request clarification from the Environmental Protection Agency (EPA) regarding the return of certain types of Polychlorinated Biphenyl (PCB) wastes to the United States (U.S.) for disposal.

EPA has previously decided that when PCBs were procured domestically by the U.S. Government, taken overseas for use by the U.S. Government, and have remained under the control of the U.S. Government since the time of procurement, the return of those PCBs to the Customs Territory of the U.S. for disposal is not considered an import under Section 6(e) of the Toxic Substances Control Act (TSCA), and is therefore not prohibited. This interpretation should be understood to apply to all PCBs (liquid or non-liquid), including PCB Items and any residuals resulting from cleanup of spills of PCBs during use, storage or transportation. The items you identified in your letter, i.e., electrical equipment, media, debris, soil and solid waste, are all examples of the type of PCB-containing materials that are covered by EPA's interpretation.

Should you have further questions concerning this policy, please contact Peter Gimlin of my staff at (202) 260-3972.

Sincerely,

/s/

John W. Melone, Director
National Program Chemicals Division

cc: PCB Coordinators,
Regions 1 - 10

CONCURRENCES							
SYMBOL	7404	7404					
SURNAME	Gimlin	Summers					
DATE	8/17/00	8/18/00					



DEPARTMENT OF THE NAVY
PACIFIC DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
258 MAKALAPA DR., STE. 100
PEARL HARBOR, HI 96860-3134

certified PM. 7/13/00
rec'd 7/19/00 - P6

5090.B24

Ser ENV1824/1769

11 JUL 2000

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. Peter Gimlin
U. S. Environmental Protection Agency
Headquarters, Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington DC 20460

Dear Mr. Gimlin:

Subj: REQUEST FOR CLARIFICATION REGARDING RETURN OF PCB WASTES
TO THE UNITED STATES (U. S.) FOR DISPOSAL

The Navy is in receipt of two letters from the U. S. Environmental Protection Agency (EPA) Office of Prevention, Pesticides, and Toxic Substances (February 7, 1984 to the Defense Logistics Agency and March 11, 1994 to the National Science Foundation) regarding return of polychlorinated biphenyls (PCBs) to the U. S. for disposal. In the two letters, EPA clarified that PCBs being returned from outside the U. S. customs territory to the U. S. for disposal are not considered an import, and therefore, are not barred for import under Toxic Substances Control Act (TSCA) Section 6(e) provided certain conditions are satisfied. Specifically, EPA clarified that the PCBs can be returned for disposal provided that the PCBs were manufactured in the U. S. and remained under the control of the U. S. Government at all times.

It is the Navy's understanding that the EPA policy of allowing the return of PCBs for disposal applies not only to PCB fluids, but also to electrical equipment as well as media, debris, soil and solid wastes that are contaminated with PCBs from electrical equipment. The Navy is currently conducting cleanup actions to address PCBs that have been released to the environment at various sites in Guam. To ensure compliance with EPA regulations, the Navy requests concurrence from your office that the provisions of the 1984 and 1994 EPA letters apply not only to fluids but include contaminated media, debris, soil and solid wastes.

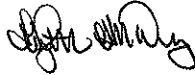
Please direct any comments or questions regarding this matter to Mr. Christopher Lonie in our Environmental Restoration Division by E-Mail at loniecm@efdpac.navfac.navy.mil or mail at Commander, Pacific Division, Attn: Mr. Christopher Lonie (ENV1824CL),

5090.B24

Ser ENV1824/ **1769**

Naval Facilities Engineering Command, 258 Makalapa Drive Suite 100, Pearl Harbor, Hawaii 96860-3134. He can be contacted by phone at (808) 474-5962.

Sincerely,



LEIGHTON G. M. WONG

Head

Environmental Engineering Department

Acting

Encl:

- (1) U. S. EPA Office of Prevention,
Pesticides and Toxic Substances
Letter Dated February 7, 1984
- (2) U. S. EPA Office of Prevention,
Pesticides and Toxic Substances
Letter Dated March 11, 1994

Copy to:

Mr. Michael Wolfram
U. S. Environmental Protection
Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Mr. Walter Leon Guerrero
Guam Environmental Protection
Agency
P. O. Box 22439
Barrigada, GU 99621

FEB 7 1984

OPTIONAL FORM 98 (7-80)

FAX TRANSMITTAL

of pages 3

To	ERIC	From	ALR
Dept./Agency		Phone #	202-260-3472
Fax #	800-839-0339	Fax #	
NSN 7540-01-317-7268		8098-101	
GENERAL SERVICES ADMINISTRATION			

Colonel Joseph T. Cuccaro
 Director
 Directorate of Environmental Protection
 Defense Logistics Agency
 Defense Property Disposal Service
 Federal Center
 Battle Creek, Michigan 49016

Dear Colonel Cuccaro:

This responds to your letter of August 2, 1983, which requested the position of the U.S. Environmental Protection Agency (EPA) on the status under the Toxic Substances Control Act (TSCA), 15 U.S.C. section 2601 et seq., of polychlorinated biphenyl (PCB) fluid owned by the U.S. Department of Defense (DOD), located abroad, and returned to the United States for disposal. If these PCBs are considered to be "imported" PCBs, their shipment to the United States is prohibited under EPA regulations.

In addition, you requested EPA's opinion on the applicability of a letter dated November 13, 1980, from Ms. Pamela Moore of EPA, to the Assistant Counsel, Defense Logistics Agency, U.S. Defense Property Disposal Service. In her letter, Ms. Moore stated that EPA does not consider the return of these Government-owned PCBs to the United States as importation for disposal. This is at variance with a memorandum dated October 23, 1980, from the Office of the Judge Advocate General of the Navy to the Chief of Naval Operations, which states that the shipment of Government-owned property from a DOD facility in a foreign country to the United States is considered "importation" under other Federal statutes and, therefore, the same interpretation should apply under TSCA.

CONCURRENCES							
COL	ORIGINATOR (TS-7710)	OC	TS-7710				
NAME	M. Phillips	Cayser	Dul	Ray			
	2/1/84	2/1/84	2/1/84	2/1/84			

Attachment 1

IN A MAY 1. 1980. FEDERAL PROPERTY DISPOSAL SERVICE

ENCLOSURE (1)

EPA has decided that DOD's right to import PCBs for purposes of disposal depends on the ownership status and the source of origin of the PCBs. The regulatory background and rationale for this determination follows.

Section 6(e) of TSCA, 15 U.S.C. section 2605(e), generally prohibits the manufacture, processing, distribution in commerce, and use of PCBs. In addition, section 6(e)(1)(A) requires that EPA set standards for the disposal of PCB wastes. Regulations implementing section 6(e) are contained in 40 CFR Part 761 (1983). These regulations were published in the Federal Register of May 31, 1979 (44 FR 31514) and were later recodified.

Part 761 of Agency PCB regulations under TSCA defines manufacture of PCBs to include importation, 40 CFR section 761.3(n). This definition is consistent with the definition of manufacture in the implemented statute. See TSCA section 3(7) of TSCA, 15 U.S.C. section 2602(7). Section 761.20(b) generally prohibits the manufacture of PCBs (and thus importation), but authorizes limited importation for purposes of disposal until May 1, 1980. See 40 CFR section 761.20(b)(1). Since May 1, 1980, all PCB importation has been prohibited.

The May 31, 1979, Federal Register notice explains the reason for limiting the importation of PCB wastes. See 44 FR 31526. EPA limited the authorized importation until May 1, 1980 in order to create an incentive for other nations to develop PCB disposal facilities. The Agency determined that other nations had not made as much progress as the United States in developing PCB disposal facilities and, if this trend were to continue, the United States would receive a disproportionate share of international PCB wastes.

In a May 1, 1980, Federal Register notice, the Agency confirmed its policy on PCB importation, stating that, effective on that date, the importation of PCB wastes for disposal would be prohibited. See 45 FR 29115. The primary rationale for this "Closed Border Policy" is that since 1979, no other nation had developed any PCB disposal facility.

With respect to DOD PCB wastes, EPA has determined that PCBs originating in other nations or shipped to other nations from the United States through commercial channels should not be authorized for disposal in the United States. In those situations where Government-owned PCBs were shipped overseas under DOD control, however, it does not serve the purpose of the "Closed Border Policy" to prevent the wastes from being returned to the United States. Through this action, the United States assumes responsibility for the return shipment and safe disposal of PCBs in the United States.

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In accordance with these considerations, EPA has classified the different sources of PCBs that DOD may desire to ship back to the United States for disposal and has determined which would be classified as "imported" PCBs. Of course, importation of PCB wastes would be prohibited under EPA regulations.

There are three situations under which DOD may wish to ship PCBs back to the United States for disposal:

1. where Government-owned PCB wastes were procured from a company in the United States and have been under the control of DOD since the date of procurement;
2. where PCBs are owned and controlled by a DOD contractor; and,
3. where PCBs are owned by DOD and were purchased from a foreign firm or foreign subsidiary of a U.S. company.

Of these situations, only the first situation would not be considered importation. In this situation, DOD shipped PCBs to the foreign country and should be responsible for the proper disposal of the waste in the United States. This situation was the subject of the aforementioned Moore letter to DOD in November 1980. In the other two situations, however, importation for disposal would not be allowed.

The scope of this interpretation only applies to the importation of PCBs for disposal under 40 CFR Part 761. EPA's interpretation of the term "import" for all other purposes of TSCA is not affected.

The Agency is in the process of reexamining the Closed Border Policy. The policy will, however, only be changed after rulemaking proceedings conducted in accordance with the Administrative Procedure Act, 5 U.S.C. section 553. If you have any further questions on this matter, please contact David Dull, Chief, Chemical Regulation Branch, Exposure Evaluation Division at (202) 382-3935.

Sincerely,

(SIGNED) DON R. CLAY

Don R. Clay, Director
Office of Toxic Substances



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

RECEIVED
MAR 16 1994

PESTICIDES & TOXIC SUBSTANCE
BRANCH — EPA REGION 10

MAR 11 1994

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

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Re: Request to return PCBs in Antarctica to the United States for disposal

On March 7, 1994, the National Science Foundation requested that the United States Environmental Protection Agency allow the return of United States government-owned PCBs from Antarctica to the United States for disposal.

The EPA has decided that a federal government agency's right to return PCBs to the United States for disposal depends on the ownership status and the source of origin of the PCBs. The regulatory background and rationale for this determination follows.

The manufacture, processing, distribution in commerce, and use of PCBs is generally prohibited. Toxics Substances Control Act (TSCA), Section 6(e), 15 U.S.C. section 2605(e). In addition, TSCA section 6(e)(1)(A) requires that EPA set standards for the disposal of PCB wastes. Regulations implementing section 6(e) are contained in 40 CFR Part 761.

Manufacture of PCBs is defined to include importation, 40 CFR section 761.3. This definition is consistent with the definition of manufacture in TSCA section 3(7), 15 U.S.C. section 2602(7). The importation of PCBs for purposes of disposal was generally allowed until May 1, 1980. Since May 1, 1980, all PCB importation has been prohibited, except for PCBs at concentrations less than 50 ppm, which are allowed to be imported for disposal under 40 CFR 761.20(b).

Attachment 2



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ENCLOSURE (2)

The May 31, 1979 Federal Register notice explains that the importation of PCB wastes was limited until May 1, 1980 in order to create an incentive for other nations to develop PCB disposal facilities. 44 FR 31526. The EPA determined that other nations had not made as much progress as the United States in developing PCB disposal facilities, and, if this trend were to continue, the United States would receive a disproportionate share of international PCB wastes.

In a May 1, 1980, Federal Register notice, the Agency confirmed its policy on PCB importation, stating that, effective on that date, the importation of PCB wastes for disposal would be prohibited. 45 FR 29115. The primary rationale for this "Closed Border Policy" is that at that time, no other nation had developed any PCB disposal facilities.

With respect to PCB wastes owned by the Department of Defense (DOD), EPA determined that where government-owned PCBs purchased in the United States were shipped overseas under DOD control, it did not serve the purpose of the "Closed Border Policy" to prevent the wastes from being returned to the United States. In that situation, therefore, the shipment of the PCBs back to the United States was not considered to be an importation under TSCA, and the shipment was not barred by the Closed Border Policy. See February 7, 1984 letter from Donald Clay, Director, Office of Toxic Substances, EPA, to Colonel Joseph T. Cuccaro, Defense Logistics Agency, Department of Defense. However, the shipment to the United States by DOD of PCBs owned and controlled by a DOD contractor, or PCBs owned by DOD but purchased from a foreign firm or foreign subsidiary of a United States company is considered importation and is prohibited by the EPA PCB regulations.

The same rationale was later applied to PCBs purchased in the United States by the United States Department of State, and used, under Department of State control, in United States embassies in foreign countries. Therefore, if the State Department-owned PCBs were procured from a company in the United States, were shipped overseas under Department of State control, and were under Department of State control since the date of procurement, the shipment of the PCBs to the United States for disposal is not considered an import and is not barred by the Closed Border Policy. See June 30, 1993 letter from John W. Melone, Director, Chemical Management Division, EPA to Harry N. Marinos, United States Department of State.

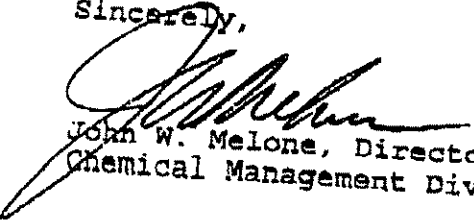
The EPA considers that the rationale outlined above for DOD and State Department-owned PCBs should also apply to any PCBs purchased by the Federal Government in the United States, taken overseas for use in United States Government facilities (including military facilities and embassies), and subsequently returned to the United States for disposal in an approved

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facility. Therefore, the waiver of the Closed Border Policy which you have requested for the PCBs in Antarctica is not necessary. However, all other applicable PCB regulations apply to the transport and disposal of the PCBs.

The scope of this interpretation only applies to the importation of PCBs for disposal under 40 CFR Part 761. EPA's interpretation of the term "import" for all other purposes of TSCA is not affected.

Sincerely,



John W. Melone, Director
Chemical Management Division

Enclosures

cc: Michael Walker, EPA OE
Connie Musgrove, EPA OCM
PCB Coordinators, Regions I-X